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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 - - - - - x

4 LIFE IS GOOD., INC.,

5 Plaintiff,

Civil Action

6 vs.

No. 04-cv-11290-REK

7 LG ELECTRONICS, U.S.A., INC.,

8 LG ELECTRONICS MOBILECOMM

9 U.S.A., INC., (formerly

ORIGINAL

10 LG INFOCOMM U.S.A., INC.),

11 Defendants.

12 - - - - - x

13 DEPOSITION OF ROBERT KLEIN, a witness called by
14 and on behalf of the Defendants, taken pursuant to
15 the provisions of the Federal Rules of Civil
16 Procedure, before Dana Welch, a Registered
17 Professional Reporter and Notary Public in and
18 for the Commonwealth of Massachusetts, at the
19 offices of Finnegan, Henderson, Farabow, Garrett
20 & Dunner, LLP, 55 Cambridge Parkway, Suite 700,
21 Cambridge, Massachusetts, on Friday, January 24,
22 2006, commencing at 10:31 a.m.

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Exhibit 12 to
Lemper Declaration

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1 phrase on it.

2 A. Okay.

3 MR. KIRBY: Which LG ad?

4 BY MR. RETTEW:

5 Q. Any LG ad for an appliance that had "Life's
6 Good" on it.

7 A. Something like what's in the second page of
8 Exhibit 2?

9 MR. KIRBY: Just so the record is clear,
10 it's tab 2 to Exhibit 81.

11 BY MR. RETTEW:

12 Q. Well, let's be even more specific. Let
13 me --

14 MR. RETTEW: Let's mark this as the next
15 exhibit, please.

16 (Marked, Exhibit 82, LG ad.)

17 BY MR. RETTEW:

18 Q. Okay. Mr. Klein, I've shown you what's
19 been marked as Exhibit 82. Let's say this was the
20 stimulus used in an Eveready format. Do you think
21 that that would be an appropriate way of measuring
22 whether there is or is not confusion in this case?

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1 MR. KIRBY: And by Eveready format,
2 you're referring to Mr. Klein's general
3 understanding as described earlier?

4 MR. RETTEW: Yes.

5 THE DEPONENT: No, I don't think this
6 would work in this case.

7 BY MR. RETTEW:

8 Q. Why is that?

9 A. The -- I think the awareness of Life is
10 good. is relatively low and the context of something
11 like this, I think, leads respondents to be thinking
12 about other similar types of products. And so I
13 don't think this would be an appropriate -- I don't
14 think an Eveready format would be appropriate here.

15 Q. What do you mean when you say you think the
16 awareness of Life is good. is relatively low?

17 A. I think that if you were to ask people to
18 spontaneously name companies that make T-shirts, few
19 of them would answer Life is good. as a company that
20 makes T-shirts. And so I think that low level of
21 awareness coupled with the difference of the
22 category makes it inappropriate in this kind of

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1 setting.

2 Q. So you'd agree that Life is good. is not
3 famous?

4 MR. KIRBY: Object to the form.

5 THE DEPONENT: I'm not sure. When you
6 say famous, could you --

7 BY MR. RETTEW:

8 Q. What's your understanding of the term
9 "famous"?

10 A. There are a number of different situations
11 in which the word "famous" could be used. I'm
12 familiar with the notion of a famous mark relative
13 to dilution. And so in that case, it would be a
14 mark that was widely recognized by consumers,
15 buyers, customers. You know, Coca-Cola is an
16 example of a famous mark. So I don't think Life is
17 good. is in the category of Coca-Cola.

18 Q. So using that definition, fair to say Life
19 is good. is not famous?

20 A. Using that definition, yes.

21 Q. Now, you also said that the stimulus I
22 showed you in Exhibit 82 would not be appropriate

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1 awareness of various slogan's including "Life is
2 good." as well as recognition of different symbols
3 and logos. And finally, sort of testing different
4 ways of showing people products.

5 Q. Why did you do that?

6 A. It's an important step in any survey
7 research design is to first get a better
8 understanding. Often, your client's version of kind
9 of what people believe or know can be different than
10 what you actually find in the market and it's
11 important to test those things yourselves.

12 Q. What did this pretest show?

13 A. Pretest showed that -- that awareness of
14 Life is good. as a trademark was relatively low,
15 that awareness of LG was relatively high as a -- as
16 a company that most people associated with cell
17 phones. And kind of if we, you know, showed people
18 the Life is good. emblem and LG's use of "Life's
19 Good" with the face and the initials LG, that there
20 was -- that people saw the connection and identified
21 that in connection as being related to the use of
22 the phrase "Life's Good."

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1 Q. Do you know the results of that question?

2 A. No.

3 Q. Who would know?

4 A. Either of the people who conducted the
5 interviews.

6 Q. Did they ever tell you what the results
7 were?

8 A. It's my recall that to the extent that this
9 question was asked, the -- there was, I'd say,
10 little awareness of Life is good. or association
11 with any products.

12 Q. What makes you say that?

13 A. I think I just answered that. I said to
14 the extent that I remember, that's what I remember.

15 Q. When I say what makes you say that, is that
16 because Ms. Schussheim told you or --

17 A. Yes, yes.

18 Q. Did she tell you anything else on that
19 topic, or was that it?

20 A. Not really, no, not that I recall.

21 Q. Did that affect the survey in any way?

22 A. I think it reinforced our prior -- that the

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